IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.4553 of 1995 (O&M)

Date of Decision: 12.12.2007

M/s Prem Cables Pvt. Ltd. ...Petitioner

Vs.

Haryana State Electricity Board ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.Vishal Garg, Advocate,
for the petitioner.
Mr.K.K.Gupta, Advocate,
for the respondent.

Vinod K.Sharma, J. (Oral)

CM No.1565-CII of 2007

This is an application for restoration of the revision petition dismissed in default on 12.1.2007.

For the reasons stated in the application the order dated 12.1.2007 is recalled and the revision petition is restored to its original number.

CR No.4553 of 1995

The petitioner, M/s Prem Cables Pvt. Ltd. has challenged an

order passed by the learned Additional District Judge, Chandigarh allowing an application moved by the respondent under Section 28 of the Arbitration Act, 1940 (for short the Act) for enlargement of the time for making the award.

The respondent Haryana State Electricity Board (for short the Board) filed an application under Section 28 of the Act before the learned Sub Judge First Class, Chandigarh for extension of time to make an award. Said application was contested by the petitioner herein and one of the issues raised was,

"Whether there was sufficient ground for extension of time?".

Learned trial court held that as the award has already been ordered to be made rule of the court there was no question of enlarging time. The application was further held to be time barred and consequently, the same was ordered to be dismissed.

The respondent Board preferred an appeal against the order passed by the learned Sub Judge First Class, Chandigarh and the said appeal was accepted and time was granted to the Arbitrator to make an award within 4 months from the date of passing of the order. The parties were further directed to appear before the Arbitrator on 29.9.1995. It may be noticed here that in the present case umpire had already entered reference and the arbitrators had ceased to have jurisdiction in the matter.

At the time of admission of this revision further proceedings before the courts below were ordered to be stayed. The order has been challenged on the ground that the same is without jurisdiction as no appeal

was competent before the learned Additional District Judge against an order passed under Section 28 of the Act. The petitioner has also challenged the locus to maintain petition for extension of time for making award by arbitrator, after the umpire had entered reference and the award made rule of the court.

There is force in this contention. Section 39 of the Act reads as under:-

> **"39. Appealable orders.--(1)** An appeal shall lie from the following orders passed under this Act (and from no others) to the Court authorised by law to hear appeals from original decree of the Court passing the orders:--
>
> An order--
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> (i) superseding an arbitration;
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> (ii) on an award stated in the form of a special case;
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> (iii) modifying or correcting an award;
>
> (iv) filing or refusing to file an arbitration agreement;
>
> (v) staying or refusing to stay legal proceedings where there is an arbitration agreement;
>
> (vi) setting aside or refusing to set aside an award.
>
> Provided that the provisions of this section shall not apply to any order passed by a Small Cause Court.
>
> (2) No second appeal shall lie from an order passed in

appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

The reading of above section shows that no appeal is competent against an order passed under section 28 of the Act.

Learned counsel appearing on behalf of the respondent contends that no such plea was raised either before the learned lower appellate court or before this court in the grounds of revision and therefore, it is not open to the petitioner now to raise the said plea.

This contention of the learned counsel for the respondent is totally misconceived, the appeal is a creation of statute. Unless jurisdiction is vested in appellate authority by statute, the court can have no power of appeal.

It is not a case where the jurisdiction is challenged on the ground of territorial jurisdiction or pecuniary jurisdiction qua which there can be estoppel.

When there is inherent lack of jurisdiction there can be no question of estoppel as question of jurisdiction being question of law can be raised at any stage.

Even otherwise, after appointment of umpire the arbitrators had ceased to have any jurisdiction.

The revision petition is allowed and the impugned order is set aside and that of learned trial court is restored.

12.12.2007 **(Vinod K.Sharma)**
rp **Judge**